

March 11, 2011

Dear Inspector General Thomas:

The Office of the Secretary of State responded to a public access complaint last October (10-FC-266). Copies of the complaint notification, agency response, official opinion and some statutes are attached. In recent days there has been considerable interest in the referenced document as well as speculation about its significance and contents, and renewed calls for its public release.

It has been the agency's position (based on my research and analysis) that the document was "not public" pursuant to IC 5-14-3-4. Based on this determination, I believe that the document contains information of a confidential nature, pursuant to the definition provided by IC 4-2-6-11:

- (11) "Information of a confidential nature" means information:
 - (A) obtained by reason of the position or office held; and
 - (B) which:
 - (i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);
 - (ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or
 - (iii) is not in a public record, but if it were, would be confidential.

I will note also at this point that pursuant to 42 IAC 1-5-11:

A state officer, employee or special state appointee shall not divulge information of a confidential nature except as permitted by law.

On behalf of Secretary White, I am requesting an advisory opinion from your office on the following issue:

Does the agency executive (state officer) have the discretion to now release the report to the public (assuming that any personal identifying information was first redacted)?

Your prompt response would be greatly appreciated. I am also seeking advice on this issue from the Public Access Counselor and the Indiana Attorney General.

Please contact me if you have any questions or require additional information.

Thank you.
Jerry Bonnet

Jerold A. Bonnet, General Counsel
Office of the Indiana Secretary of State